

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Second Periodic Review of the)	MB Docket No. 03-15
Commission's Rules and Policies)	
Affecting the Conversion)	
To Digital Television)	

To: The Commission

**REPLY COMMENTS OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. AND
THE NATIONAL ASSOCIATION OF BROADCASTERS**

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SUMMARY

There has been tremendous progress toward a DTV conversion in the six years since the Commission first established its DTV table of allotments. Indeed, nearly 98% of all U.S. television households are in markets that have access to digital service, and over 75% of all U.S. households are in markets that have access to five or more digital signals. In this proceeding, the Commission must embrace the opportunity to continue to drive the transition by adopting policies that ensure the flexibility broadcasters need to build out fully, preserve the integrity of the television spectrum, and, ultimately, protect the public's interest in free and universal over-the-air television.

There can be little doubt that television broadcasters have worked hard to assure the progress made to date in the off-air digital transition and want the digital transition to move forward expeditiously. To this end, television broadcast stations have already invested approximately \$4.5 billion to convert to digital. This expenditure has been made at a time when there have been relatively few off-air digital tuners in television sets and negligible carriage on cable or satellite systems. Indeed, before the transition is over broadcasters will spend between 10 and 16 billion dollars to convert fully to digital. Television broadcasters simply cannot afford to strand this investment and, accordingly, will push hard to assure a successful transition.

Broadcasters, however, cannot achieve a successful transition by themselves. While other industry groups and consumer groups have been critical of the progress made to date by broadcasters — a spurious critique belied by the facts cited above and in these reply comments — they persist in making proposals that would inevitably limit the availability of free over-the-air television, slow the transition, and raise the cost of digital viewing to the public. The Commission must resist such proposals and, instead, adopt rules supported by the comments

in this proceeding that preserve the public interests in a healthy over-the-air broadcast service, spectrum integrity, and optimal DTV service upon the completion of the DTV transition. To this end, the Commission should, among other things:

- establish a channel election deadline of May 1, 2005, which would allow the Commission and industry enough time to develop an optimal process for working through the difficult issues presented by the repacking process and, in turn, permit broadcasters to make fully informed election decisions while providing a certain election date sufficiently in advance of the end of the transition;
- establish replication and maximization deadlines that coincide with the end of the transition and reject the various “band clearing” proposals for a premature transition of out-of-core stations;
- eliminate the simulcasting rule because, as noted by most commenters, it is unnecessary to ensure viewer access to the most desired programming and, instead, limits the flexibility necessary to facilitate the transition and protect the interests of viewers;
- permit satellite stations to turn in their digital authorizations and “flash cut” to DTV transmission on their analog channels;
- interpret the extension provisions in Section 309(j)(14)(B) in a manner that is consistent with Congress’s clear intent to ensure that consumers are protected to the greatest extent possible against a loss of service when the transition ends; and
- adopt rules governing technical standards that will enhance delivery of DTV to consumers.

MSTV and NAB reiterate that these actions and policies will best promote Congress’s and the Commission’s goal of avoiding undue disruption to viewers or severe hardship to broadcasters as a result of the DTV transition and will assure that the public’s over-the-air television service will be robust in the all-digital world. By taking these steps and thoughtful, appropriate action with respect to other challenges in the DTV transition — including, but not limited to, the resistance of the cable industry to carry digital broadcasts and the absence of any requirement for over-the-air DTV tuners in the plug-and-play agreement

between consumer electronics manufacturers and cable companies — the Commission can continue to advance the DTV transition to the ultimate benefit of the public.

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The Association for Maximum Service Television, Inc. ("MSTV") and the National Association of Broadcasters ("NAB")¹ file these reply comments with respect to the Commission's Notice of Proposed Rulemaking (the "Notice") in its second DTV biennial review.² As MSTV and NAB noted in the initial round of comments in this proceeding, broadcasters have invested heavily in and worked hard to promote the transition to digital television.³ Currently, there are over 885 digital television stations operating in 189 markets in the United States and reaching 97.67% of all U.S. television households, and approximately 75.7% of TV households are in markets that have access to five or more digital signals. These

¹ MSTV represents nearly 400 local television stations on technical issues relating to analog and digital television services. NAB serves and represents the American broadcast industry as a nonprofit incorporated association of radio and television stations and broadcast networks.

² Notice of Proposed Rulemaking, *In re Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Transition*, MB. Docket No. 03-15, FCC 03-8 (rel. Jan. 27, 2003). ("Notice").

³ See *Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters* at 1-2 (April 21, 2003). ("MSTV/NAB Comments").

figures, as well as the fact that almost all network-owned and affiliated stations in the top thirty markets are on the air in digital, are a testament to broadcasters' already considerable expenditure and dedication to ensuring a successful transition for the public.⁴ Moreover, local broadcast stations and television networks continue to promote the transition by broadcasting increasing amounts of HDTV content, including popular special events such as the Super Bowl, the Masters Golf Tournament, the Oscars, and the Olympics.⁵

Indeed, far from the unsubstantiated assertion that broadcasters are "dragging their feet,"⁶ there can be little doubt that television broadcasters want the off-air digital transition to move forward *expeditiously*. To this end, television broadcast stations have already invested approximately \$4.5 billion to convert to digital. This expenditure has been made at a time with relatively few off-air digital tuners in television sets and negligible carriage on cable or satellite systems. Indeed, before the transition is over, broadcasters will spend between 10 and 16 billion dollars to fully convert to digital. Television broadcasters simply cannot afford to strand this investment and, accordingly, will continue to work hard to assure a successful transition.

A successful transition, however, cannot depend solely upon the efforts of broadcasters. MSTV and NAB strongly believe the Commission must take all appropriate action to move the transition forward, and, to this end, encourage the Commission to adopt the procedures and policies outlined in these reply comments and the earlier comments submitted in the proceeding. MSTV and NAB believe such procedures and policies will provide for the rapid

⁴ See Notice at ¶ 9.

⁵ See also *Comments of the Consumer Electronics Association*, at 10 (April 21, 2003) ("Over-the-air HDTV broadcasts of the Super Bowl, NCAA Basketball Championships, the Masters Golf Tournament and the Oscars also have provided compelling programming options to American consumers."). ("CEA Comments").

⁶ *Comments of Consumer Federation of America*, at 1 (April 21, 2003). ("CFA Comments").

transition of over-the-air broadcasting to a digital transmission system in a manner that secures the public's interest in free and universal over-the-air digital television and, equally important, protects and optimizes the integrity of the television spectrum. As many have observed, it is the successful accomplishment of an over-the-air digital transition that ultimately will result in recovery of the 700 MHz spectrum. The sale of non-broadcast related digital equipment and the provision of new digital cable and satellite-based services will not help the government reclaim spectrum. Only those policies that are specifically designed to help further the successful transition of over-the-air television to digital for the benefit of the public will achieve the desired spectrum reclamation. Accordingly, the Commission should establish policies and deadlines that will not prematurely stunt broadcasters' efforts to build out fully their digital facilities, and should refrain from taking actions suggested by some parties — such as those who wish to accelerate the clearing of the upper 700 MHz band for other uses⁷ — that will compromise the public's access to free, universal over-the-air broadcast service and deprive the public from reaping the full, long-term benefits of DTV.

Indeed, in addition to the band-clearing proposals that are discussed in more detail below, MSTV and NAB believe it is important to address several policies raised by some commenters that would serve to delay the digital transition for over-the-air television and disenfranchise the public. For example, the National Cable & Telecommunications Association (“NCTA”) takes the astonishing position that cable carriage of broadcasters' digital signals will not help the broadcast digital transition, and urges the Commission not to move forward on

⁷ See, e.g., *Comments of Cavalier Group, LLC*, at 7-14 (April 21, 2003) (“*Cavalier Comments*”); *Comments of Flarion Technologies, Inc.*, at 2-3 (April 21, 2003) (“*Flarion Comments*”); *Comments of Harbor Wireless*, at 1-2 (April 21, 2003) (“*Harbor Wireless Comments*”).

digital carriage issues until non-cable homes have converted to digital.⁸ In other words, according to NCTA, the Commission should not take steps to ensure that 70 percent of U.S. television households can receive local digital broadcast signals until non-subscribers convert to digital.

This cynical policy position not only would put the proverbial cart before the horse, it would throw the horse, i.e. the digital transition, under the cart. Cable carriage is essential to drive the transition. Lack of digital carriage, on the other hand, will prolong the transition because, in order to assure access for its viewers, stations will be forced to continue to operate in both analog and digital and non-cable subscribers, in turn, will continue to rely on analog broadcasts. Congress plainly understood and wanted to avoid this anomalous result when it included cable carriage considerations in the 15% test for whether to grant an extension to the transition deadline. Accordingly, MSTV and NAB urge the Commission to reject NCTA's approach and, instead, adopt policies that ensure free television will remain vibrant in the digital age so that the benefits of the digital revolution do not become the exclusive province of pay-cable services.⁹

Similarly, MSTV and NAB take issue with the continued efforts by the Consumer Federation of American ("CFA") to undermine the digital transition.¹⁰ CFA's repeated assertion

⁸ See *Comments of the National Cable & Telecommunications Association*, at 17 (April 21, 2003). ("NCTA Comments").

⁹ Not only will this approach delay the broadcast digital transition, but it will benefit the cable industry's newly found HDTV business plan. After years of criticizing HDTV as taking up too much spectrum, it is now evident that the cable industry is scrambling to bring its own HDTV services "on line" while still refusing to carry many local digital broadcast stations.

¹⁰ See also Ex Parte Communication of CFA, *In re Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39 (Aug. 2, 2002) (opposing DTV tuner mandate).

with respect to a “\$70 billion giveaway” is simply wrong. There has never been any economic or empirical foundation for this amount. Indeed, CFA’s claim ignores the simple facts that the digital channels were squeezed in between *pre-existing* analog television broadcast channels — that is, spectrum already dedicated for television broadcast purposes is simply being optimized to provide new service to the public — and that after the transition is complete, broadcasters will be giving more than 100 MHz spectrum back to the government.

Equally perplexing is CFA’s continued criticism of the costs involved with incorporating a digital tuner in a television set, as well as the potential costs of incorporating the “broadcast flag.” As the Commission has previously found, absent such a rule incorporating a digital tuner, set manufacturers would continue to sell roughly 35 million analog sets per year, thereby extending the digital transition forever. On the other hand, and as the Commission also has found, the costs of including an off-air DTV tuner in a television set will be more than reasonable once such sets are mass-produced.¹¹

In short, following CFA’s proposals would be disastrous for the very group CFA purports to represent — American consumers. Absent DTV tuners and appropriate copyright protection provided by the broadcast flag, American consumers would be left with one dominant digital provider – the cable industry. Rather than increasing the retail price of a DTV set by roughly \$16 (amortized over the life of the DTV set), CFA would leave consumers with no reasonable off-air alternatives, and would instead force consumers to rely primarily on cable systems for their digital and HDTV programming — a result that would cost consumers billions

¹¹ Second Report & Order and Second Memorandum Opinion & Order, *In re Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, 17 FCC Rcd 15978, 15997-15998 (2002).

in monthly subscription fees.¹² The Commission must reject such costly proposals and take appropriate action to move forward with the transition while preserving the interests of the viewing public.

I. THE COMMISSION'S DTV POLICIES SHOULD FACILITATE A SUCCESSFUL DTV TRANSITION AND ASSURE THAT THE PUBLIC ENJOYS OPTIMAL POST-TRANSITION DTV SERVICE.

The Commission's rulemaking in this proceeding is essential to establishing a framework for the creation of a DTV table that will optimize DTV service. To this end, MSTV and NAB believe it is incumbent upon the Commission and industry to work together to develop priorities, policies and procedures for the creation of a final DTV table of allotments. MSTV and NAB intend to present the Commission with a detailed proposal addressing these issues in a timely fashion. At the same time, in order to guard against sub-optimal DTV service and disenfranchised viewers, the Commission's rules on such issues as channel election, replication and maximization deadlines, simulcasting, and satellite stations must continue to provide broadcasters with the necessary flexibility to transition successfully to digital service and preserve the integrity of television spectrum both during and after the transition.

A. Channel Election

The comments filed in this proceeding generally support the May 1, 2005, channel election deadline proposed by the Notice, but also make clear that the channel election

¹² As CFA itself has noted, since the passage of the 1996 Cable Act, cable rates have risen over 50%. *See* Testimony of Gene Kimmelman, Senior Director for Advocacy and Public Policy on behalf of Consumers Union and Consumer Federation of America, before the Senate Commerce, Science and Transportation Committee, May 6, 2003 at 1. Absent off-air digital reception capability in the home, consumers will have no choice but to turn to cable systems that, according to CFA, have the ability to raise prices and pass through program price increases because of monopoly power. *Id.* at 7.

and repacking process present numerous challenges that will require time to work through.¹³ As stated previously, if not carefully coordinated, the channel election process could lead to excessive interference, resulting in sub-optimal DTV service.¹⁴ Further, other challenges facing the Commission in establishing channel election rules include, but are not limited to, establishing clarity in order of election, providing a fair process for out-of-core stations, and how best to address the equities of parties that make elections that adversely affect each other.¹⁵ The comments filed to date amplify these points. For example:

- The out-of-core station of Capitol Broadcasting Company “does not have sufficient operational data to determine whether a move back to Channel 5 is preferred over a move to an available in-core UHF channel.”¹⁶
- Belo Corp. notes that its Dallas-Fort Worth station operates on NTSC channel 8 and DTV channel 9 and that presence of a nearby station in Temple, Texas operating on DTV channel 9 “could result in interference problems once that station begins operating with full facilities. Yet, because of the lack of detailed channel election guidelines, Belo is constrained in its ability to evaluate whether permanent DTV operation on channel 8 would be better.”¹⁷
- Cox Broadcasting notes that for broadcasters to make informed channel election decisions, the Commission should clarify, among other things, “whether interference agreements between stations pursuant to Section 73.623(g) will be given effect after the DTV transition,” and “whether . . . the *de minimis* interference standard of Section 73.623(c) is transitory or will remain effective after the close of the transition.”¹⁸

¹³ See, e.g., *Comments of Belo Corp.*, at 8 (April 21, 2003) (“*Belo Comments*”); *Comments of Capitol Broadcasting Company, Inc.*, at 11 (April 21, 2003) (“*CBC Comments*”); *Comments of Cox Broadcasting, Inc.*, at 4 (April 21, 2003) (“*Cox Comments*”); *Comments of the Association of Public Television Stations, the Corporation for Public Broadcasting, and the Public Broadcasting Service*, at 25 (April 21, 2003) (“*Public Broadcasting Comments*”).

¹⁴ See *MSTV/NAB Comments* at 5.

¹⁵ *Id.*

¹⁶ *CBC Comments* at 11.

¹⁷ *Belo Comments* at 8-9.

¹⁸ *Cox Comments* at 2.

The complexities of the channel election process thus cannot be resolved overnight, nor should they be. The May 1, 2005, deadline proposed by the Commission strikes a fair balance by allowing adequate time for the Commission and industry to develop an appropriate, optimal process that will permit broadcasters to make fully informed decisions while also providing a certain election sufficiently in advance of the end of the transition to allow broadcasters and the Commission to develop a post-transition channel plan. The Commission therefore must resist the efforts of those commenters, such as wireless operators, that wish to accelerate the channel election deadline strictly to serve their own self-interest rather than that of the public.¹⁹ In response, the Commission should develop procedures that are fair for all parties and that allow stations to gain enough experience to make a reasonable judgment about election and thereby maximize the likelihood that the public will receive optimal post-transition DTV service.²⁰

B. Use-It-Or-Lose-It Replication and Maximization Deadlines

- 1. The Commission should adopt use-it-or-lose-it deadlines that coincide with the end of the transition.**

¹⁹ See, e.g., *Cavalier Comments* at 20-21; *Comments of Motorola, Inc.*, at 6 (April 21, 2003) (“*Motorola Comments*”).

²⁰ In connection with the channel election issue, some comments encouraged the Commission to allow stations to swap their analog and digital channels through an application process. See, e.g., *Cavalier Comments* at 22-23. These comments ignore the vital public interests that are at stake in the transition. As MSTV and NAB stated in more detail in their comments, permitting channel swaps through an application process could preclude an optimal repacking process and result in excessive interference both before and after the transition. *MSTV/NAB Comments* at 7; see also *Comments of Sinclair Broadcasting*, at 8 (April 21, 2003) (“An application process will not afford interested parties an adequate opportunity to conduct the necessary engineering analysis to determine whether the proposed channel swap would cause harmful interference.”) (“*Sinclair Comments*”). The procedural protections inherent in rulemakings are necessary to guard against the potential deleterious effects of channel swaps.

Consistent with the desire to assure both continuity and optimization of digital service for the public, MSTV and NAB again encourage the Commission to establish replication and maximization deadlines for all stations that coincide with the end of the transition — a position that finds support among other commenters as well.²¹ Contrary to the claims of the wireless winners of the 700 MHz spectrum auction,²² the absence of an early deadline will not slow the DTV transition. As noted above and in the earlier comments of MSTV and NAB, the vast majority of network-affiliated stations in major markets constructed and are operating with full DTV facilities.²³ While these broadcasters will continue to drive the transition,²⁴ smaller and smaller-market stations that are operating at lower power also are providing core services that will stimulate the transition.

Indeed, a deadline at the end of the transition will provide important benefits that will hasten the successful build out of DTV facilities while protecting the public interest in free, universal over-the-air broadcast television. As discussed in detail in many of the comments, while broadcasters are striving hard to build out fully their digital facilities, difficult issues such

²¹ See, e.g., *CBC Comments* at 12; *Public Broadcast Comments* at 26; *Belo Comments* at 10.

²² See *Cavalier Comments* at 19-20; *Comments of Datacom Wireless*, at 4 (April 21, 2003) (“*Datacom Wireless Comments*”).

²³ *MSTV/NAB Comments* at 8; see also *Notice*, at ¶ 5 (“In the top thirty television markets, 113 of the 119 network-affiliated television stations are on the air in digital In markets 1-10, of the 40 network affiliates due to be on the air by May 1, 1999, 38 are on the air with digital. The Remaining two were licensed and on the air prior to September 11, 2001, but are now off the air due to the attack on the World Trade Center.”).

²⁴ See Fifth DTV Report and Order, *In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, 12 FCC Rcd 12809, 12842 (1997) (“We agree that the most viewed stations in the largest television markets can be expected to lead the transition to DTV and that these stations are better situated to invest the capital necessary to establish the first DTV stations.”).

as tower siting and interference remain.²⁵ A use-it-or-lose-it deadline that is at the end of the transition will allow broadcasters to conduct the necessary tower and engineering studies to construct full facilities and avoid providing sub-optimal service. At the same time, a deadline coinciding with the end of the transition will mitigate stranded investment in maximized facilities by broadcasters that must change DTV channels at the end of the transition. By contrast, mandating that broadcasters operate their digital services at full power during the transition will exacerbate interference to analog service, limit broadcasters' ability to respond to interference problems that may arise, and increase the prospect of stranded investment.²⁶

Most importantly, television broadcasters are not looking to sidestep their obligation to serve their communities during the transition. The Commission could adopt reasonable, interim measures to encourage broadcasters to provide a level of DTV service to their core service areas in order to help drive consumer interest in digital television. To this end, MSTV and NAB reiterate that they do not oppose an intermediate signal strength requirement that would take effect prior to an end-of-transition use-it-or-lose-it deadline.²⁷ An intermediate signal strength requirement, coupled with a use-it-or-lose-it deadline at the close of the

²⁵ See, e.g., *MSTV/NAB Comments* at 10, 36; *Sinclair Comments* at 6; *Comments of Communications Corporation of America*, at 2 (April 21, 2003) ("*CCA Comments*").

²⁶ Equally important, an end-of-the-transition-deadline will avoid the disproportionate harm that broadcasters in smaller markets would incur under an early deadline. Because smaller market broadcasters typically have less resources to build out their facilities and because their markets typically have lower and slower DTV set penetration, such stations are confronted with greater financial constraints that limit their ability to sustain dual full power operations until their markets complete the transition to DTV. As the comments of Communications Corporation of America illustrate, in light of these financial burdens and other obstacles (e.g., tower issues in the case of CCA), an early use-it-or-lose-it deadline could force stations in smaller markets to make the undesirable choice of giving up their analog signal before the transition deadline. *CCA Comments* at 2-3.

²⁷ *MSTV/NAB Comments* at 13-14.

transition, would accomplish the Commission's goal of ensuring that DTV service is available to the great majority of Americans so as to drive consumer investment in DTV sets, while at the same time ensuring that viewers enjoy widespread, interference-free over-the-air digital television service once the transition ends.²⁸

2. Band-clearing should not drive the Commission's use-it-or-lose-it DTV policy.

MSTV and NAB urge the Commission to reject proposals that call for an early replication and maximization date on "spectrum clearing" grounds. Commenters such as CFA and Cavalier Group ("Cavalier") favor early removal of the spectrum from those broadcasters that cannot build out fully because of financial hardship in order to accelerate the deployment of pay services.²⁹ This approach is hostile to and entirely inconsistent with the clear congressional goal of fully transitioning the nation's broadcast television service to digital and ensuring that the public has access to free and universal over-the-air digital television service, and all of its benefits, in the future.

Similarly, the Commission should reject the various band-clearing proposals for an early transition of out-of-core stations, and should treat those stations no differently from those inside the core in terms of interference protection and use-it-or-lose-it deadlines. Even though out-of-core broadcasters shoulder an additional burden of building out facilities that they

²⁸ See also *Belo Comments* at 10 ("Belo does not object to [an intermediate signal strength requirement,] if it is coupled with a use-it-or-lose-it deadline at the close of the transition, as it would facilitate the Commission's goal of ensuring that 'the maximum number of consumers is able to receive digital television as quickly as possible while providing broadcasters a realistic timetable for increasing to full power.'").

²⁹ *CFA Comments* at 4 ("Broadcasters must be required to provide full power digital transmission or give back the spectrum."); *Cavalier Comments* at 24 (arguing for expedited use-it-or-lose-it deadline and other penalties for stations that cannot afford to build out before the Commission's proposed deadline).

know they ultimately will lose, they have persevered and continued to expand their digital coverage area.³⁰ These stations should receive the same protections afforded those fortunate enough to have in-core channel allotments.³¹ Indeed, proposals that would force broadcasters out of the 700 MHz band prior to the end of the transition are contrary to Congress's clear mandate that broadcasters be left undisturbed in the spectrum through the end of the transition.³²

Both Congress and the prospective new entrants to the 700 MHz band were well aware that the existence of broadcasters could reduce the utility of the 700 MHz band for other services during the transition, and the prices paid at auction reflected this existence.³³ That Congress nevertheless ordered an early auction for the encumbered spectrum while explicitly protecting broadcasters, and that the winning auction bidders nevertheless bid on the spectrum in

³⁰ See *MSTV/NAB Comments* at 12.

³¹ As noted in their earlier comments, "MSTV and NAB understand that, in addition to protecting the authorized and/or applied for facilities of out-of-core DTV channels, the requirement that wireless operators and other services protect the "actual" parameters of existing stations requires protection of the DTV full replication and/or maximization facilities of out-of-core stations regardless of whether the DTV station is currently operating, or has filed an application to operate, pursuant to those facilities." *MSTV/NAB Comments* at 12. Accordingly, "[i]f the Commission does not protect as 'actual' the replicated or maximized service area of a DTV station," it could further deprive viewers from access to DTV service. *Id.*

³² See 47 U.S.C. § 337(d)(2) (stating that the Commission shall establish "restrictions necessary to protect full-service analog television service and digital television service during a transition to digital television service").

³³ MSTV previously has provided detailed comments noting that auction winners knew exactly what they were getting in the 700 MHz spectrum and that the degree to which broadcast incumbents limit the use of the spectrum during the transition was a known risk that Congress accepted in ordering the Commission to protect television service. See *Comments of MSTV, In re Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168 (Aug. 16, 2000). As those comments address, MSTV, along with other broadcasters, included in their response to the Commission's *Sixth Notice of Proposed Rulemaking* in the DTV proceeding a report illustrating that some spectrum in channels 60-69 would be unavailable for use if it were auctioned before broadcasters had transitioned to DTV and moved to lower channels. *Id.* at 5; see also *Broadcasters' Comments on the Sixth Notice of Proposed Rulemaking*, Appendix D1, in MM Docket No. 87-268 (Nov. 22, 1996).

such circumstances, evidences Congress's and the new entrants' respective intent to create and accept a scheme of trade-offs that should be preserved by the Commission's rules.³⁴

Similarly, the FCC should avoid forced band-clearing plans that are premised on losing off-air service and replacing it with cable carriage. It is important to note that while cable carriage is critical to ensuring an effective transition, cable-only delivery of broadcast stations, whether in-core or out-of-core, would be contrary to the goal of preserving the public's access to free, over-the-air television. Indeed, nearly one-third of all television sets in the United States rely exclusively on off-air reception and are not connected to either a cable or satellite service. In this setting, an early transition deadline or reduced interference protection would limit the access of a large segment of the public to vital over-the-air broadcast signals, restrict the public's access to important information and programming that may be distributed by those stations, and inhibit fair competition among stations.³⁵ These results would be contrary to compelling governmental interests.³⁶

³⁴ Access Spectrum proposes to revise and relax the interference standards as applied to land mobile stations and television broadcasters. *See Comments of Access Spectrum LLC*, at 6-7 (April 21, 2003). ("*Access Spectrum Comments*"). The interference parameters established between these two services have been in existence and working effectively for decades. Access Spectrum offers no engineering or empirical evidence that would justify a change from the present interference rules.

³⁵ For many of the foregoing reasons, MSTV and NAB also oppose the reduction of an interference protection for channel 51 or the imposition of any additional obligation on channel 51 stations, and encourage the Commission to ensure that channel 51 continues to receive at least the same level of protection as other in-core channels, including from wireless entities and other new service providers. In the Notice, the Commission stated that "because channel 51 is adjacent to channel 52, we are concerned about possible interference between new wireless licensees on channel 52 and operations on channel 51." *Notice* at ¶ 59. MSTV and NAB share this concern and believe that, if anything, it suggests that channel 51 should be subject to greater interference protections than other in-core channels. As a part of the already reduced core spectrum for over-the-air television services, the Commission must ensure that the integrity of channel 51 is preserved. Moreover, channel 51 could be a vital part of the transition to the in-core spectrum. Stations that have two out-of-core channels or that operate on analog channel 51 (continued...)

C. Pending DTV Applications

In connection with its comments on use-it-or-lose-it replication and maximization deadlines, the Consumer Electronics Association (“CEA”) proposes that stations with pending DTV applications be required to build facilities to service their communities without a construction permit from the Commission. According to CEA, “[t]he Commission . . . should require stations with applications it cannot resolve in time to meet the same obligations as other stations: service their communities of license until the new deadline to be established in this proceeding for extending the DTV signal to cover their existing analog service areas.”³⁷ As previously stated, MSTV and NAB “oppose a requirement that broadcasters build out facilities that deviate from those that they have sought, in good faith and in order to better service the public, through properly filed DTV applications.”³⁸ Stations with pending DTV applications, which may have been delayed for reasons beyond the stations’ control, will not be able to make fully informed, reasonable decision about the facilities that they must to construct. Requiring construction in the face of such an information void necessarily would lead to inefficient investment and considerable financial pressures, which “ultimately could drive broadcasters to settle for inferior DTV facilities rather than incur the costs of constructing a second set of facilities once the pending DTV application is granted.”³⁹

may choose, either out of necessity or preference, channel 51 when making channel elections. These stations should be entitled to no less interference protection than the other in-core stations.³⁵

³⁶ *See Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 189 (1997).

³⁷ *CEA Comments* at 18.

³⁸ *MSTV/NAB Comments* at 13

³⁹ *Id.*

D. Simulcasting

MSTV and NAB note that, with the exception of the cable industry and certain winning bidders in the 700 MHz spectrum auction, there is broad agreement that a simulcasting requirement is not necessary to ensure viewer access to the most desired programming and, instead, limits the flexibility necessary to facilitate the transition and protect the interests of viewers.⁴⁰ It is indeed ironic that the cable industry, which has complained previously about wanting compelling and differentiated digital content as an incentive to carry broadcasters and which in the instant proceeding professes its commitment to carrying innovative programming, urges the retention of the simulcasting requirement.⁴¹ The FCC should not be swayed by such a disingenuous argument.

It is now clear, as it should have been all along, that broadcasters have incentive to broadcast their most desired programs in both digital and analog format, and to feature particular events on their digital signals in a manner that promotes consumer interest in DTV. Removal of the simulcast requirement will provide broadcasters with greater flexibility to tailor their programming in a manner that best serves the demands of their audience, including by offering compelling HD programming.⁴² Thus, the arguments of the cable industry, as well as

⁴⁰ See, e.g., *Public Broadcasting Comments* at 31; *CBC Comments* at 12; *Belo Comments* at 11; *HDNet Comments* at 6-11; see also *Comments of Paxson Communications Corporation*, at 40 (April 21, 2003) (“PCC believes that the simulcasting requirements are premature in light of current market conditions.”) (“*PCC Comments*”). Indeed, even the consumer electronics industry only would require stations to broadcast digital content generally for a prescribed period of time — a proposal that resembles MSTV’s and NAB’s encouragement of the Commission to retain a phased-in minimum hours-of-operation requirement for smaller and smaller-market broadcasters. See *CEA Comments* at 19; *MSTV/NAB Comments* at 16-17.

⁴¹ See *NCTA Comments* at 7-11, 21-25.

⁴² See *MSTV/NAB Comments* at 15-16; *HDNet Comments* at 8-11.

those of Cavalier (which similarly calls for incentives to create more digital programming),⁴³ are misplaced, and their concerns in reality would be better served by the *elimination* of the simulcast requirement.

E. Satellite Stations

The comments filed in this proceeding make clear that it would be prohibitively expensive for many satellite stations to run analog and digital stations concurrently and, therefore, the Commission should permit satellite stations to turn in their digital authorizations and “flash cut” to DTV transmission at the end of the transition period. For example, Media General Communications notes that building even low-power DTV facilities at its satellite stations “would require an outlay of approximately \$3,750,000,” and subsequently constructing full-power DTV facilities “would require at least \$6,000,000 in additional expenses.”⁴⁴ Given these expenses and faced with the financial constraints of operating in largely rural, sparsely populated areas with poor economies, Media General states it would “be required to eliminate most if not all of the resources currently dedicated to sustaining local operations at [its] Satellite Stations” if it is forced to construct DTV facilities before the end of the transition.⁴⁵ Likewise, LeSea Broadcasting notes that “the burden of constructing even ‘minimum build’ digital facilities pursuant to special temporary authority and then operating such facilities until the end of the transition remains too high economically to justify such actions.”⁴⁶ Flash-cut is the logical

⁴³ *Cavalier Comments* at 30.

⁴⁴ *Comments of Media General Communications, Inc.*, at 6 (April 21, 2003). (“*Media General Comments*”).

⁴⁵ *Id.*

⁴⁶ *Comments of LeSea Broadcasting Corporation*, at 3 (April 21, 2003). (“*LeSea Broadcasting*”).

and fair solution to the problems that confront satellite stations, and one that will ensure the greatest access for the public to free, over-the-air broadcast television without slowing the transition itself. As MSTV and NAB previously have noted, however, the Commission should take care to ensure that flash-cut does not interfere with the clarity and certainty of the channel election process and, therefore, should require a satellite station's decision to flash-cut to occur prior to the channel election deadline.⁴⁷ Those satellite stations that already have built out their digital facilities should be granted flexibility in other ways, such as being permitted to operate their DTV facilities at a reduced schedule until the end of the transition.

II. THE COMMISSION'S IMPLEMENTATION OF SECTION 309(J)(14)(B) SHOULD REFLECT THE CLEAR CONGRESSIONAL INTENT TO PROTECT VIEWERS FROM WIDESPREAD DISENFRANCHISEMENT AT THE CLOSE OF THE TRANSITION.

Pursuant to the plain language and legislative history of Section 309(j)(14)(B), the Commission's rulemaking with respect to extending the deadline of the transition should follow one simple principle: ensuring that consumers are protected to the greatest extent possible against a loss of service when the transition ends. To this end, the terms of the third exception under 309(j)(14)(B) (the "15% test") must be applied to require that at least 85% of viewers in a particular market *actually* receive the undegraded digital signals of their local television stations before the analog signal may be turned off. Accordingly, the Commission must reject the comments of auction winners in the 700 MHz spectrum that call for the statute to be changed or for the Commission to interpret the statute in a manner that requires the transition to end as soon as possible and without regard to the number of viewers that actually can view digital

⁴⁷ *MSTV/NAB Comments* at 18.

transmissions.⁴⁸ Indeed, the 15% test already compromises the access of a substantial segment of the public to free over-the-air broadcast service in order to complete expeditiously the transition. In implementing this provision, the Commission must ensure that the balance established by Congress is not disrupted – and additional viewers disenfranchised – to serve the private interests of auction winners that acquired the spectrum with full knowledge of the extension criteria Congress put in place.

A. Market Definition

The comments filed in this proceeding to date for the most part support defining the “market” for purposes of the 15% test by reference to a station’s designated market area (“DMA”) as opposed to a station’s Grade B contour.⁴⁹ As MSTV and NAB have previously addressed, and as the Commission previously has recognized in its ownership and cable carriage rules,⁵⁰ such a definition makes sense because the DMA most accurately reflects a television station’s economic market since it is based on actual viewing patterns.

A definition based on a station’s Grade B contour, on the other hand, would not necessarily reflect a station’s economic market, and it would be administratively cumbersome as it would require the compilation of market data for each individual station’s contour rather than

⁴⁸ See, e.g., *Cavalier Comments* at 31; *Harbor Wireless Comments* at 6.

⁴⁹ See, e.g., *Public Broadcasting Comments* at 33; *CEA Comments* at 20; *Comments of Paxson Communications Corporation*, at 20 (April 21, 2003) (“PCC Comments”); *Comments of National Minority T.V., Inc.*, at 1 (April 21, 2003) (“NMTV Comments”).

⁵⁰ See, e.g., Report and Order, *Review of the Commission’s Regulations Governing Television Broadcasting*, MM Docket No. 91-221, 14 FCC Rcd 12903, 12926, ¶ 48 (1999); *Second Further Notice of Proposed Rule Making*, MM Docket No. 91-221, 11 FCC Rcd 21655, 21663, ¶ 15 (1996).

collecting data on a DMA-wide basis.⁵¹ Depending on the station's location, a Grade B standard may be either over- or under-inclusive. For example, on the East Coast, many stations located in large markets provide a Grade B contour over a smaller, adjacent market. Under a Grade B standard, many of the TV households in the smaller, adjacent market would be included in 15% test calculation. As a result, larger economic markets with greater DTV set penetration may have the transition delayed because the test would be including homes located outside the market, but within a station's Grade B contour. At the same time, smaller markets whose Grade B signals spill over into adjacent larger markets may have the transition accelerated prematurely. Thus, a Grade B market definition is inappropriate because it would not reflect accurately actual viewership of a given station, it is in tension with the statutory language, and its administrative challenges could be a drag on the transition process, thereby working against the precise goal — i.e., an early transition — that those comments in support of a Grade B definition hope to achieve.⁵²

Finally, with respect to the requirement that the 15% test take into consideration whether an MVPD is carrying “each” station broadcasting in a given market, MSTV and NAB

⁵¹ Notice at ¶ 73; see also *NMTV Comments* at 2 (“[A] station’s Grade B contour creates even greater problems in terms of consistency, administration, and, ultimately, appears to be contrary to the intent of the statute.”).

⁵² Notwithstanding that DMA is the better definition of market for the purposes of the Section 309(j)(14)(B), there may be isolated instances — such as if a station is located on the edge of a DMA — when the DMA definition does not accurately capture a station’s real-world market. For these instances, MSTV and NAB again encourage the Commission to adopt rules that would provide for a waiver of the DMA definition. The Commission, however, should not deviate from the DMA standard unless a station has requested a waiver and shown that the DMA standard is an inappropriate market definition in its particular case. As explained in the initial comments of MSTV and NAB, the Commission should take into account particular factors relevant to the DTV transition, such as whether special consideration might be merited for geographically dispersed hyphenated markets, when evaluating waiver requests. See *MSTV/NAB Comments* at 21-22.

note that there was broad support that “each” means all those full power stations in each market that are eligible for must-carry on the relevant MVPD.⁵³ Under this interpretation, the phrase “each” appropriately would require that an MVPD carry the digital signals of all local commercial television stations or noncommercial educational television stations entitled to cable carriage in order to count toward the 85% penetration threshold necessary to end the DTV transition in a market.

B. Access

As with the proper definition of market, the Commission must interpret what qualifies as “access” to digital signals for purposes of the 15% test in a manner that ensures, as Congress intended, that the greatest number of consumers actually have available to them the digital signals of their local broadcast television stations. To this end, MSTV and NAB reiterate their comments that a viewer should be considered to have access to a local broadcaster’s digital signal for the purposes of Section 309(j)(14)(B) only if he or she *actually receives an undegraded digitally originated broadcast television signal* at his or her home, whether the viewer views that signal in digital format on a digital set or downconverts the signal once it reaches the home for viewing on an analog set. A proper interpretation of Section 309(j)(14)(B) thus would preclude the position advocated by the cable industry — namely, that subscribers to a MVPD that downconverts the signal at the cable headend and carries it on its system should

⁵³ See, e.g., *Public Broadcaster Comments* at 36 (noting that “each” means “those local broadcast digital stations that are eligible for must carry status”). Indeed, some of the comments would go beyond this definition of “each” and require MVPDs to carry all stations, regardless of must carry status. See *PCC Comments* at 21 (“[F]or subscribers to an MVPD to apply to the 85% threshold, the MVPD must carry all the DTV signals in its DMA.”); *Sinclair Comments* at 18 (“Section 309(j)(14)(B)(iii)(I) . . . requires an MVPD to be carrying all of the television stations broadcasting a digital channel to fulfill this element of the 15 percent test.”).

count toward the 85% threshold.⁵⁴ Such a rule is clearly inapposite with congressional intent because it would leave viewers at the mercy of the cable companies' whims of whether to downconvert a digital signal, rather than ensuring they have equipment allowing access to the digital signal. Further, because the position urged by the cable companies would provide no promise that a DTV signal actually will reach a viewer's home in digital format, it would discourage DTV sales and limit viewers' incentives to outfit themselves with the equipment necessary to receive digital programming in their homes, thereby undercutting clearly stated goals of Congress and the Commission.⁵⁵

In order to ensure that viewers have the ability to view digital signals, MSTV and NAB reiterate that converters must be able to decode all DTV formats.⁵⁶ Permitting households that have converters capable of converting some but not all DTV signals to count toward the 85% threshold would run the risk of producing a "false positive" as to whether there is sufficient digital penetration in a market to end the transition. Further, for such converters to be considered "generally available" to the public, they should be available for sale at a reasonable cost at retail outlets throughout the relevant market. To this end, and for the following reasons, Cavalier's proposal that the "generally available" requirement simply means that converters should be

⁵⁴ *NCTA Comments* at 20 (arguing that "digital signals that are downconverted and carried on a [MVPD] system in analog format" should count as "carried" for purposes of the 15% test).

⁵⁵ For these reasons, MSTV and NAB also oppose those comments that argue a household should count towards the 85% threshold if it receives DTV either over-the-air or via an MVPD, regardless of how the household receives the signal from the MVPD (e.g., whether it is converted by the set or at the cable headend). *See, e.g., Cavalier Comments* at 38-39.

⁵⁶ *See also Sinclair Comments* at 16.

“available over the internet, from MVPD carriers, and . . . for purchase by mail order or otherwise”⁵⁷ is deficient and should be rejected:

- As has been well established, many households receive broadcast television only via over-the-air signals, making the availability of converters from MVPDs unhelpful.
- The proposal presumes that households will be able to access and purchase items from the Internet, even though many households still do not have Internet access.
- Mail order is not commonly used by most Americans to purchase items, especially items that are technically sophisticated.

Congress intended the public to reap the benefits of DTV. The Commission’s rules on the access provisions of Section 309(j)(14)(B) must reflect this clear congressional intent, including by ensuring that converters decode all digital signals and truly are “generally available” to all segments of the public.

C. Process

In terms of who should shoulder the burden of demonstrating whether an extension is warranted, the comments of the consumer electronics industry and certain winners of the 700 MHz spectrum auction propose burdensome procedures that are contrary to Congress’s intent. As the Notice points out, and as MSTV and NAB’s previous comments cite, Congress undeniably intended for the Commission to have primary responsibility on this issue:

[T]he conferees recognize that [the analysis of whether a household should count toward the 15% threshold] will impose additional burdens on the Commission. Consequently, the conferees expect that the Commission will pursue this analysis only if it first concludes that a station does not qualify for an extension under the network digital television broadcast test or the converter technology test.

⁵⁷ *Cavalier Comments* at 37.

In establishing the requirements for the 15 percent test, the conferees sought to establish objective criteria that could be determined by “yes” or “no” answers obtained from consumers surveyed in the relevant market. *The conferees expect that the Commission will perform its own analysis* A broadcast television licensee requesting the extension and other interested parties *are to be afforded an opportunity* to submit information and comment on the Commission’s analysis.⁵⁸

Notwithstanding Congress’s plain design, the consumer electronics industry proposes to require broadcasters to bear the burden of proof in seeking the market extension and to conduct the necessary market research,⁵⁹ and certain wireless holders of the 700 MHz spectrum auction winners propose to require broadcasters seeking an extension to make an individualized showing as well as for broadcasters to reimburse the Commission for research costs incurred in making the necessary determination.⁶⁰

Significantly, most of the information required to meet the statutory exemption requirement is not readily available to a television station. For example, a local television stations will have no first hand knowledge of the number of cable subscribers in its market, the general availability of converters, or even the number of DTV sets in its market. Moreover, it is unlikely that the cable operators, set manufacturers or retail stores will provide a television station with such information. Further, by placing such burdensome requirements on

⁵⁸ H.R. CONF. REP. NO. 105-217, at 577-78 (1997) (emphasis added). Even the spectrum winners that have taken an adverse position to broadcasters on most issues agree that the Commission “must perform and oversee the fact finding process” necessary to make the determination whether to grant an extension. *Cavalier Comments* at 43.

⁵⁹ *CEA Comments* at 22-23.

⁶⁰ See, e.g., *Comments of Statewide Wireless Network, New York State Office for Technology*, at 22-23 (April 21, 2003) (proposing that stations “should be required to make separate showings”); *Harbor Wireless Comments* at 5 (opposing blanket exceptions); *Motorola Comments* at 7-8 (arguing that extension should be considered on an individual station basis); *Cavalier Comments* at 43-44 (proposing that stations should reimburse Commission for costs associated with market extension determination).

broadcasters to prove the need for an extension and/or fund the necessary studies, such proposals raise the costs of determining whether an extension should be granted and, in turn, are clearly intended to render unrealistic the granting of any extension, contrary to the clear intent of Congress and the public interest. The Commission should reject these proposals outright and, instead, recognize its proper responsibility for making market-by-market determinations of whether to grant extensions.

The Commission similarly should reject proposals by those intent on bringing the transition to a premature close to adopt unreasonably short extension periods for those stations in markets where the 85% threshold or other statutory prerequisites for completing the transition have not been met.⁶¹ Adopting unreasonably short extension periods will impose substantial burden on broadcasters and, particularly, on the Commission, which would be required to reassess each market at the close of each extension period, even where it is clear that the market is unlikely to reach the statutory threshold during that period of time. Moreover, as MSTV and NAB stated in their initial comments, the Commission need not address the specifics as to the length of extensions and the frequency with which it should re-evaluate whether a market continues to meet the extension criteria in this biennial review proceeding.⁶² The resolution of these issues, as well as consideration of the specific timing and procedures for migrating to final DTV channels, are better addressed in the Commission's next biennial review when the conclusion of the transition is more near.

⁶¹ See, e.g., *Comments of Crown Castle USA Inc.*, at 6 (April 21, 2003) (urging six-month limit on extensions); *CEA Comments* (urging that extension should only be effective for one year) ("*Crown Castle Comments*"); *Cavalier Group* (urging that extensions should be reviewed annually).

⁶² See *MSTV/NAB Comments* at 25.

III. THE COMMISSION'S RULES ON TECHNICAL STANDARDS AND OTHER ISSUES SHOULD ENHANCE DELIVERY OF DTV TO CONSUMERS.

There are several important technical issues that have been raised in this proceeding. As detailed in MSTV's and NAB's original comments and reiterated below, MSTV and NAB believe that Commission's rules on these technical issues should be guided by a desire to enhance the ultimate delivery of DTV service to consumers.

A. Single Frequency Networks/Distributed Transmission Technology

MSTV and NAB reiterate their strong support for the concept of distributed transmission and note that several parties have filed favorable comments on this technology.⁶³ Nevertheless, there remain a number of critical issues to be resolved involving distributed transmission technology. For example, for such a system to work, individual transmitters would have to be given primary status, and interference protection for adjacent markets must be examined. Accordingly, MSTV and NAB again urge the Commission to move forward with its examination of this new technology in an expedited fashion and to provide its utmost attention to any remaining questions involving the technology.

B. PSIP Requirements

Multiple comments in this proceeding support MSTV and NAB's position that requiring the use of ATSC A/65B ("PSIP") in broadcasters' DTV transmissions will improve and/or better enable channel navigation and identification, closed captioning, and content advisories. In the particular area of closed captioning, CEA and Sharp Electronics ("Sharp") note that if PSIP is mandatory and manufacturers are certain that the caption service descriptor is

⁶³ See, e.g., *Comments of Harris Corporation* at 9 (April 21, 2003) ("*Harris Comments*"); *Comments of Merrill Weiss Group LLC*, at 29-33 (April 21, 2002).

present, the closed captioning function will be better able to function properly on DTV sets.⁶⁴

NAB and MSTV agree with this conclusion and urge the Commission both to adopt PSIP and to require transmission of the caption service descriptor in the Event Information Table (“EIT”) of the PSIP data structure. Of course, if cable operators are permitted to strip PSIP information from local broadcast signals, these benefits may be lost.

C. Active Format Descriptors

CEA and Sharp also request that the optional active format descriptor (“AFD”) and the optional “bar data” data defined in Amendment 1 of ATSC A/53B be made mandatory when the video frame is not filled with active video.⁶⁵ While the development of the AFD is a valuable enhancement to the DTV standard, NAB and MSTV disagree that transmission of this data should be made mandatory. Because the AFD solves a particular problem affecting the rendition of the broadcaster’s signal with certain kinds of program content on DTV receivers, market forces will be adequate to ensure broadcasters’ use of this descriptor in appropriate circumstances. A mandate by the Commission therefore is not necessary .

D. Enhanced VSB

ATSC notes that it is in the process of standardizing additional enhancements to the A/53B DTV standard.⁶⁶ When standardization is completed, these enhancements will allow broadcasters significant additional flexibility to provide service to receiving locations with low signal strength and/or other difficult reception conditions, as well as to offer new services. As an

⁶⁴ *CEA Comments* at 27-28; *Comments of Sharp Electronics*, at 13-14 (April 21, 2003) (“*Sharp Comments*”).

⁶⁵ *CEA Comments* at 24; *Sharp Comments* at 6.

⁶⁶ *Comments of the Advanced Television Systems Committee*, at 4 (April 21, 2003). (“*ATSC Comments*”).

example applications of the enhancements, ATSC suggests a possible “fallback” service (audio-only or audio and low resolution video) in the event that reception fails in the normal channel.⁶⁷ ATSC also offers that an example of a new service application might be a 24-hour news, weather and traffic service using the robust mode while simultaneously transmitting HDTV in the normal mode.⁶⁸ Such a public interest-oriented service could be available on portable devices and/or under reception conditions that simply would not be feasible with 8VSB transmission. ATSC notes that it is also considering efficient video and audio compression technologies to support these new services and will update the Commission as this work progresses.⁶⁹

NAB and MSTV applaud the work of ATSC in this area and note that ATSC is also actively exploring within its technical groups other potential uses for the VSB enhancements. NAB and MSTV are confident that the additional flexibility in the technical standard afforded by ATSC’s standardization of the VSB enhancements will potentially make a multitude of new services available that would otherwise not be feasible. MSTV and NAB urge the Commission to take appropriate steps to permit implementation of such flexible capabilities once the industry standardization process is completed.

IV. THE COMMISSION SHOULD TAKE ACTION TO ADDRESS CONTINUING CHALLENGES IN THE DTV TRANSITION.

In their earlier comments in this proceeding, MSTV and NAB stated their appreciation for the steps the Commission thus far has taken to drive the DTV transition, but noted that the success of the digital transition will depend on the resolution of a number of issues including: 1) digital cable carriage; 2) implementation of the broadcast flag; 3) including off-air

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

tuners in receiving devices with the appropriate labeling; 4) resolution of critical tower siting issues; and 5) resolution of Canadian interference issues.⁷⁰

For the purposes of these reply comments, MSTV and NAB note that other comments received by the Commission also illustrate that resolving these issues in a timely fashion is essential to provide the public with access to the full benefits of DTV service.⁷¹ Since these issues have been thoroughly addressed, MSTV and NAB will not repeat these arguments here. Nonetheless, MSTV and NAB wish to emphasize the importance of cable carriage and the “plug and play” issues.

A. Cable Carriage

The vast majority of the comments received in this proceeding rightly emphasize the need for cable carriage of digital television signals during the DTV transition.⁷² Though a significant segment of the public still receives its television service strictly via over-the-air broadcast, the reality is that the majority of Americans receive their local television channels — at least on their primary set — from MVPDs, particularly cable.⁷³ Yet, only approximately one-

⁷⁰ *MSTV/NAB Comments* at 33-37.

⁷¹ See *PCC Comments* at 23-24 (noting that interference to Canadian DTV allotments is causing delay in grant of the construction permits of PCC stations near the Canadian border); *Crown Castle Comments* at 10 (urging Commission to implement labeling requirements); *HDNet Comments* at 5 (noting that lack of consumer awareness is one obstacle to transition); *CCA Comments* at 2 (discussing tower issues as obstacle to build-out of digital facilities of KADN-TV in Lafayette, Louisiana). In addition, MSTV and NAB reiterate their support for the adoption of a broadcast flag, which, contrary to the claims of CFA, would serve the public interest by protecting against the unauthorized distribution of digital broadcast content and thereby increase the incentive for the broadcasters to create and distribute such content. See *MSTV/NAB Comments* at 34-35.

⁷² See, e.g., *NMTV Comments* at 3; *CBC Comments* at 9; *Public Broadcaster Comments* at 18-19; *Belo Comments* at 5; *Harris Comments* at 3-4; *Sharp Comments* at 2.

⁷³ See *CBC Comments* at 8 (noting that over 85% of households receive their local channels from multichannel providers (citing Ninth Annual Report, *In re Annual Assessment of the Status of* (continued...))

eighth of the digital stations in operation “were being carried by cable as of April 7, 2003.”⁷⁴

Even when digital signals are carried, the cable operators often do not carry all of the digital content in those signals. As these facts illustrate, the cable industry has resisted voluntary carriage of the great majority of over-the-air digital broadcast signals currently on air, resulting in great uncertainty regarding the public’s ability to access the digital services offered by local television stations. Such uncertainty, in turn, is holding back the transition because it inhibits investment in new DTV equipment by manufacturers and consumers and stunts incentives and access to financing for broadcasters to upgrade digital facilities and develop innovative digital content and services.

As noted above, the cable industry’s suggestions that it should be allowed to wait until “a sufficient number of non-cable customers are readily able to receive digital signals” before any carriage requirements are instituted and that, at that point, the analog spectrum should be returned are farcical. Cable carriage is needed to *drive* the transition; if it is left to be simply an afterthought of the transition, there is a substantial likelihood that the 85% threshold *will never be achieved*. As the transition lags, consumer interest in digital content and services will wane, stations will be financially harmed by the expense of continuing to operate two full power facilities without appreciable DTV viewership, the quality of service provided to the public will slip, and the goals of the transition — preserving the nation’s free and universal over-the-air television system and making the benefits of DTV available to the public — will fail. The Commission therefore should take action to ensure that a lack of cable carriage of DTV signals,

Competition in the Market for Delivery of Video Programming, MB Docket No. 02-145, FCC 02-338 (rel. Dec. 31, 2002))

⁷⁴ *Id.* (citing CableWorld, *Skirmish in the Desert Over DTV*, April 14, 2003).

including all non-subscription data, does not thwart the DTV transition and disadvantage the public.

B. Plug-and-Play

In their comments, the consumer electronics manufacturers call upon the Commission to adopt rules that will assure the implementation of the agreement between the manufacturers and the cable industry on national “plug-and-play” cable standards for DTV products.⁷⁵ MSTV and NAB believe that properly implemented plug-and-play standards will further the goals of the transition, but these standards must ensure that viewers are able to access over-the-air digital broadcast signals and are not permanently relegated to pay-only digital television services. Significantly, the agreement between the cable industry and the consumer electronics manufacturers fails to include any requirement for over-the-air DTV tuners. Such a requirement is necessary to ensure the greatest market penetration for digital signals. Accordingly, MSTV and NAB encourage the Commission to take the opportunity presented by the cable plug-and-play agreement to institute policies that also will foster the development and use of over-the-air DTV tuners. To this end, as MSTV and NAB previously have stated, the Commission specifically should amend the proposed rules governing the plug-and-play agreement to require over-the-air reception capability.⁷⁶

V. CONCLUSION

MSTV and NAB continue to encourage the Commission to take action that advances the DTV transition while assuring the public’s interest in free over-the-air digital


⁷⁵ *CEA Comments* at 13; *Comments of Thomson, Inc.*, at 9 (April 21, 2003).

⁷⁶ *See* Comments of the National Association of Broadcasters and the Association for Maximum Service Television, Inc., *In re Compatibility Between Cable Systems and Consumer Electronics Equipment*, PP Docket 00-67 (March 28, 2003).


broadcast television. To this end, the Commission should reject any comments that call for a premature end to the transition and, instead, should adopt a report and order that, consistent with the principles and policies identified above and in the earlier comments of MSTV and NAB, protects spectrum integrity, ensures an optimal and equitable repacking process, preserves broadcasters' ability to implement the transition flexibly, and enhances the delivery of DTV services to consumers both during the transition and after the transition ends.

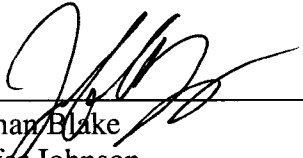
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